

## Austria

Joint Submission to the Human Rights Council at the 37<sup>th</sup> Session of the Universal Periodic Review

### Summary

Austria<sup>1</sup> is party to the core statelessness conventions and most relevant human rights treaties. However, it retains significant reservations to the 1954 Convention on the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the European Convention on Nationality (ECN), impacting on stateless people. On 1 January 2020, Austria recorded 4,255 stateless persons, 745 of 'unknown nationality', and 12,025 of 'undetermined nationality'. Of particular concern in Austria are barriers to realising children's right to a nationality, the lack of a statelessness determination procedure and protection status, very limited access to economic and social rights for stateless persons, and the risks of arbitrary detention of stateless persons.

### Children's right to a nationality

Children born stateless in Austria do not acquire Austrian nationality automatically and must meet requirements that go beyond the 1961 Convention to acquire nationality (lawful residence for at least 10 years, short timeframe for applications). As a result, children born stateless in Austria may remain stateless for their entire childhood and the number of children affected has grown. Provisions for the acquisition of Austrian nationality at birth by children born to Austrian fathers out of wedlock are discriminatory and impose procedural deadlines that could render children stateless. Following a previous UPR recommendation, Austria committed to addressing this and ensuring non-discrimination, but regulations have not yet been amended.

### Statelessness Determination and Status

Austria does not have a statelessness determination procedure. Statelessness may only be identified through other administrative procedures (e.g. international protection or residence permit applications). However, the identification of statelessness does not result in any legal status nor right of residence. Without legal residence, stateless people lack adequate protection and have access only to emergency medical care and primary education. Stateless people face barriers to employment and housing has been reported as inadequate. This raises concerns in the current COVID-19 pandemic, as inadequate housing conditions may increase the risk of infection.

### Risks of Arbitrary Detention of Stateless Persons

Stateless people face a heightened risk of arbitrary detention where procedural safeguards to identify statelessness and barriers to removal are lacking. In Austria, statelessness is not considered juridically relevant in decisions to detain and vulnerability assessments are inadequate. Since an amendment to the Immigration Police Act in 2018, detention is allowed for purposes that go beyond the European Convention on Human Rights. Coercive detention may be imposed repeatedly, without access to legal aid nor to an effective remedy. If removal cannot be carried out for factual reasons outside the control of the individual, there is little protection on release and the person may only apply for 'tolerated stay', which is not considered legal stay under domestic law and does not entail the right to work.

### Proposed recommendations:

1. Establish a legal basis for the automatic acquisition of Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless.
2. Amend Article 14 of the Austrian Nationality Act in line with the 1961 Convention and allow children born stateless in Austria to acquire Austrian nationality until the age of 21.
3. Amend Article 7 of the Austrian Nationality Act to ensure that children born to Austrian fathers out of wedlock acquire Austrian nationality retroactively upon establishment of fatherhood.
4. Establish a statelessness determination procedure in line with UNHCR guidance and good practice, which provides a legal basis for granting residence and rights to people determined to be stateless.
5. Consider statelessness a juridically relevant fact in return and detention decisions to prevent arbitrary (immigration) detention of stateless people.
6. Guarantee non-discrimination in COVID-19 responses on any grounds including nationality, documentation, or migration/residence status.

<sup>1</sup> For a more detailed overview and references, see the full joint submission at: <https://www.statelessness.eu/sites/default/files/2020-11/UPR37%20AUSTRIA%20July%202020.pdf>.